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APPELLANT PRO SE:

**KENNETH FAUST**

New Castle Correctional Facility  
New Castle, Indiana

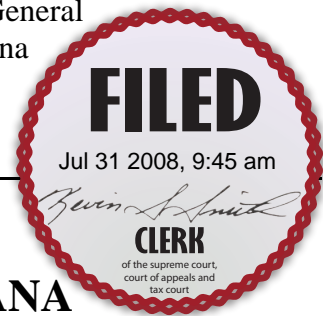
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**IN THE  
COURT OF APPEALS OF INDIANA**

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KENNETH FAUST,

Appellant-Petitioner,

vs.

STATE OF INDIANA,

Appellee-Respondent.

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No. 49A02-0801-PC-68

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Patricia Gifford, Judge

Cause No. 49G04-0910-CF-129462

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**July 31, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

Kenneth Faust contends that the trial court erred in denying his motion to correct erroneous sentence. We affirm.<sup>1</sup>

The facts most favorable to the trial court's judgment indicate that on November 18, 1992, a jury found Faust guilty of murder. On May 21, 1992, Faust was sentenced to sixty years' imprisonment. Our supreme court affirmed Faust's conviction on direct appeal. On February 6, 1998, we affirmed the post-conviction court's denial of Faust's petition for post-conviction relief. On September 22, 2002, we declined to authorize Faust's second successive petition for post-conviction relief. On October 18, 2007, Faust, pro se, filed a motion for correction of sentencing determination. In his motion, Faust alleged that the special judge who conducted his trial lacked subject-matter jurisdiction to hear his case and that the sentencing court erroneously considered hearsay evidence. On October 22, 2007, the trial court denied his motion. On November 13, 2007, Faust filed a motion to correct error and a motion for change of venue, which were denied by the trial court on November 15, 2007. This appeal ensued.

Faust contends that the trial court erred in denying his motion to correct erroneous sentence. Specifically, Faust now contends that he was illegally convicted because the special judge who heard his case lacked subject-matter jurisdiction, the sentencing court improperly considered hearsay evidence, and Indiana Code Section 35-38-1-15, as well as *Robinson v. State*, 805 N.E.2d 783 (Ind. 2004), are unconstitutional.

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<sup>1</sup> On July 3, 2008, Faust filed an Objection to Appellee's Brief and Motion to Strike. We deny Faust's motion in an order issued contemporaneously with this opinion.

The sole issue for our review is whether the trial court abused its discretion in denying Faust's motion to correct erroneous sentence. When reviewing the trial court's decision on such a motion, we "defer to the trial court's factual finding" and review such decision "only for abuse of discretion." *Mitchell v. State*, 726 N.E.2d 1228, 1243 (Ind. 2000). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Myers v. State*, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999). However, we will "review a trial court's legal conclusions under a de novo standard of review." *Mitchell*, 726 N.E.2d at 1243.

"When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable." *Robinson*, 805 N.E.2d at 786.

[A] motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.

*Id* at 787 (footnote omitted).

Here, resolution of all three of Faust's contentions requires consideration of factors outside the face of the sentencing judgment. Therefore, Faust's claim may not be presented by way of a motion to correct erroneous sentence. In light of this fact, the trial court did not abuse its discretion in denying Faust's motion.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.